

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

IN RE: ROBERT LEE CLINE, JR.,

Debtor.

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CASE NO. 02-00232

CHAPTER 7

ORDER

For the reasons stated in this Court's contemporaneous Memorandum Decision, it is

ORDERED

that the Objection to the Debtor's Motion to Add a Creditor filed by Loretta Gail Martin is
SUSTAINED.

The Clerk is directed to send copies of this Order and accompanying
Memorandum Decision to the Debtor, Robert Lee Cline, Jr.; Debtor's counsel, Charles R. Allen,
Jr., Esq.; counsel for Loretta Gail Martin, Richard L. Greenberg, Esq.; the Chapter 7 Trustee,
George A. McLean; and the Office of the U.S. Trustee.

This 31st day of May, 2006.

William F. Stone, Jr.

UNITED STATES BANKRUPTCY JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

IN RE: ROBERT LEE CLINE, JR.,

Debtor.

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CASE NO. 02-00232

CHAPTER 7

MEMORANDUM DECISION

The matter before the Court is the Debtor's Motion to Add a Creditor (i.e., to his bankruptcy schedules) and the Objection to same filed by Loretta Gail Martin, his former wife, in her capacity as Executor of the estate of her deceased aunt, Cicero P. Wheeler, the creditor. The particular question raised by these pleadings is whether the creditor's claim was a pre-petition obligation of the Debtor discharged by the discharge order entered on April 23, 2002 or a post-petition obligation not affected by such discharge.¹ For the reasons noted below, the Court concludes that the Objection to the Debtor's Motion to Add a Creditor should be sustained.²

FINDINGS OF FACT

The parties agree that the Stipulation they have agreed to contains the facts necessary for the Court to make its decision. A copy of that Stipulation (without accompanying exhibits) is attached as an exhibit to this Decision and is incorporated by reference. The Court

¹ The only issue decided in this Decision is whether the Debtor's signing of the 2003 note was a pre-petition obligation, not whether the Debtor may have state law defenses to liability upon the note, such as lack of consideration or fraudulent inducement.

² The Court recognizes that generally the issue of whether a particular obligation is or is not discharged in bankruptcy is presented in an adversary proceeding pursuant to Federal Rule of Bankruptcy Procedure 7001. The parties, however, have elected and at least implicitly agreed to put the issue before the Court upon the pleadings already mentioned and their Stipulation of Facts.

will summarize those facts it believes to be critical to its decision.

Loretta Gail Martin and Robert Lee Cline, Jr., the Debtor, were married on September 7, 1999. Prior to the marriage, Ms. Martin was appointed general power of attorney for her aunt, Cicero Patsel Wheeler. On November 3, 1999, Ms. Martin borrowed \$34,000.00 from her aunt as evidenced by a promissory note signed by Ms. Martin.³

On January 17, 2002, the Debtor filed a voluntary petition in this Court for relief under Chapter 7 of the Bankruptcy Code.⁴ According to the Debtor's Schedule I, he and Ms. Martin were separated when he filed bankruptcy. On April 23, 2002, this Court entered an order discharging the Defendant from all personal liability for debts existing on the date his bankruptcy petition was filed and prohibiting all creditors from attempting to collect any such debt. By an order of the same date, the Debtor's bankruptcy case was closed.

On May 14, 2003, Ms. Martin's aunt, Cicero Patsel Wheeler, died. Several days later, on May 26, 2003, the Debtor and Ms. Martin executed a promissory note payable to the Estate of Cicero Patsel Wheeler for the balance of the \$34,000.00 loan borrowed on November 3,

³ The note is signed by Gail H. Cline, who is now Loretta Gail Martin. While the parties have stipulated that Ms. Martin borrowed the money from her aunt, the note itself appears to indicate that she borrowed the money from Southwest Virginia Savings Bank, FSB, in her capacity as attorney-in-fact for Ms. Wheeler and pledged her aunt's savings account there as collateral. There is no indication of any separate writing from Ms. Martin (then Ms. Cline) in her personal capacity promising to repay the money to the aunt. The Court notes that the November 3, 1999 note signed by Ms. Martin is stamped as "Paid by Renewal" on May 8, 2000. (Stipulation of Facts Exhibit B.) The parties have not presented any evidence or stipulation concerning any note or notes between the November 3, 1999 note and the document signed by the Debtor, Mr. Cline, on May 26, 2003.

⁴ The parties have stipulated that Ms. Martin was aware that the Debtor filed bankruptcy and that the Debtor did not list any indebtedness to Cicero P. Wheeler in his bankruptcy. (Stipulation of Facts ¶¶ 6-7.)

1999.⁵ Why he would have done such a thing is not disclosed by the Stipulation, but in his Answer to the Objection to his Motion he states that his wife used the loan funds, which he claims she initially represented to be an inheritance from her aunt, to pay joint bills and that “some funds were made available to the debtor for payment of his obligations.” Ms. Martin was appointed Executor of the Estate of Cicero Patsel Wheeler on July 24, 2003.

On November 28, 2005, the Estate of Cicero P. Wheeler filed a Motion for Judgment against the Debtor in the Circuit Court for the City of Roanoke in the amount of \$15,090.40, which represents the balance due on the May 26, 2003 promissory note. The Stipulation does not indicate why Ms. Martin, the Executor, sued only her former husband on the note and not also the other two parties to it, herself individually and Charlotte A. Ryder. On

⁵ The note was signed by the Debtor, Gail P. Cline, who is now Gail Martin, and Charlotte A. Ryder, whose identity or involvement in the transaction is not disclosed by the Stipulation. The Court notes that the document signed by these parties is not a negotiable instrument and is not executed under seal. Its specific contents are as follows:

I, Robert L. Cline and Gail P. Cline owe the estate of Cicero P. Wheeler the remaining balance of 34,000.00 for loan of _____ borrowed November 3, 1999.

I agree to make payment to the Estate of Cicero Wheeler.

In the event of my death, I authorize this debt to be paid from my estate.

Interested parties:

Charlotte Ryder	833 Georgene Dr. Albuquerque, NM
Gail Cline	2604 Truman Hill Rd. Hardy, Va.

/s/ Robert L. Cline 5/26/03

/s/ Gail P. Cline 5/26/03

/s/ Charlotte A. Ryder 5-26-03

(Stipulation of Facts Exhibit F.)

December 19, 2005, the Debtor filed a Plea of Bankruptcy in the Circuit Court for the City of Roanoke alleging that the debt giving rise to the Motion for Judgment was incurred on November 3, 1999 and that the debt was discharged by this Court on April 23, 2002.

On December 20, 2005, the Debtor filed a Motion to Reopen his bankruptcy case and a Notice of Amendment to Debtor's Schedules of Creditors adding the Estate of Cicero P. Wheeler to his schedules with a disputed claim of \$15,090.40. An order reopening the Debtor's bankruptcy case pursuant to Federal Rule of Bankruptcy Procedure 5010 for the purpose of adding a creditor was entered on December 27, 2005.

On February 8, 2006, Ms. Martin filed the Objection to the Debtor's Motion to Add a Creditor which is currently before the Court. In support of her Objection, Ms. Martin argues that the basis for the Motion for Judgment pending in the Circuit Court for the City of Roanoke is the promissory note signed by the Debtor on May 26, 2003. Counsel for Ms. Martin argues that the May 26, 2003 promissory note was executed after the Debtor filed bankruptcy and was not discharged by this Court's order dated April 23, 2002.

The Debtor filed an Answer to Ms. Martin's Objection on February 14, 2006 arguing that Ms. Martin asked him to sign the promissory note dated May 26, 2003, which "obligated the [D]ebtor to repay the funds that [Ms.] Martin had received from [her aunt]. Any such obligation arose prior to the filing of the [D]ebtor's Chapter 7 bankruptcy petition." (Answer to Objection ¶ 5.) Because Ms. Martin did not ask the Debtor to sign a reaffirmation agreement pursuant to 11 U.S.C. § 524(c), the Debtor argues that the May 26, 2003 promissory note is void and has no legal effect, thus any obligation to the Wheeler estate was discharged. This matter was heard on April 10, 2006. The matter has been fully briefed by the parties and is

now ready for decision.

CONCLUSIONS OF LAW

This Court has jurisdiction of this proceeding by virtue of the provisions of 28 U.S.C. §§ 1334(a) and 157(a) and the delegation made to this Court by Order from the District Court on July 24, 1984. Determination of the dischargeability of particular debts is a “core” bankruptcy proceeding pursuant to 28 U.S.C. § 157(b)(2)(I).

A creditor is defined under the Bankruptcy Code as an “entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor.” 11 U.S.C. § 101(10)(A). The filing of a voluntary bankruptcy petition “constitutes an order for relief.” 11 U.S.C. § 301. Thus, only holders of claims that arose prior to the commencement of the bankruptcy case are considered to be creditors. The Bankruptcy Code defines claim broadly as a

- (A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or
- (B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

11 U.S.C. § 101(5). As the Fourth Circuit Court of Appeals has recognized, “Congress intended that the definition of claim in the Code be as broad as possible, noting that ‘the bill contemplates that all legal obligations of the debtor, no matter how remote or contingent, will be able to be dealt with in the bankruptcy.’” *Grady v. A.H. Robins Co.*, 839 F.2d 198, 200 (4th Cir. 1988) (quoting H.R. Rep. No. 595, 95th Cong., 1st Sess. 309 (1977), S. Rep. No. 989, 95th Cong., 2d Sess. 21-22 (1978)).

The Supreme Court commented “[t]he plain meaning of a ‘right to payment’ is nothing more nor less than an enforceable obligation” *Pa. Dep’t of Pub. Welfare v. Davenport*, 495 U.S. 552, 559 (1990). However, where there is no legal relationship defined at the time of filing bankruptcy, “it would be impossible to find even the remotest ‘right to payment.’” *In re Chateaugay Corp.*, 154 B.R. 416, 419 (S.D. N.Y. 1993).

In November 1999, Ms. Martin borrowed \$34,000.00 from her aunt. The parties agree that Mr. Cline did not sign or endorse the 1999 note or otherwise promise at that time to repay that loan. Indeed, there is no indication that he was even aware any loan had been obtained. The Debtor did not have any legal obligation to repay Ms. Martin’s loan nor did Ms. Martin’s aunt have a right to seek repayment of the loan from the Debtor. The Debtor only became obligated, if at all, to repay the loan by executing and signing the note dated May 26, 2003. At such time, the Estate of Cicero P. Wheeler had a right to seek repayment of the loan from the Debtor and the other obligors upon the note. As such, the Estate of Cicero P. Wheeler is a post-petition creditor of the Debtor and its debt was not in any way affected by the discharge order entered on April 23, 2002 in the Debtor’s Chapter 7 bankruptcy case. It should be noted at this point, however, that any obligation of the Debtor to the Wheeler estate for the original pre-petition receipt or use of the funds to pay joint or the Debtor’s personal obligations was discharged by the Debtor’s bankruptcy, whether or not the estate is listed as a creditor in the bankruptcy schedules as it is stipulated that Ms. Martin, the Executor of the Estate, was aware that the Debtor had filed bankruptcy. *See* 11 U.S.C. § 523(a)(3)(A); *In re Presley*, 288 B.R. 732, 735 (Bankr. W.D. Va. 2003); 4 *Collier on Bankruptcy* ¶ 523.09[1], [4], [5] (Alan N. Resnick & Henry J. Sommer eds., 15th ed. rev.). Therefore, any such purported liability could not serve as

consideration for the execution of the 2003 note because it had been discharged.

The Debtor argues that the May 26, 2003 note signed by the Debtor “relates to an obligation that arose prior to the Chapter Seven filing. Therefore, [the Debtor] was entitled to the protection of 11 U.S.C. Sec. 524(a)(2), which enjoins suits to collect discharged debts.”

(Debtor’s Mem. 2.) This argument fails in that the Debtor had no legal obligation to repay the loan prior to signing the May 26, 2003 note. The fact that the May 26, 2003 note references a loan “borrowed November 3, 1999” does not somehow make the Debtor liable for that loan from November 3, 1999.

Further, the Debtor’s argument that the May 26, 2003 note “did not create a new and separate obligation. Rather, that [note] attempted to reaffirm [the Debtor’s] remaining obligation for the balance due on the November 3, 1999 note” fails. (Debtor’s Mem. 2.) There have been no facts stipulated from which the Court might determine that the Debtor had any legal obligation to repay the November 3, 1999 loan until he signed the note on May 26, 2003. Accordingly, an order in accordance with the provisions of this Memorandum Decision shall be entered contemporaneously herewith.

This 31th day of May, 2006.


UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

[illegible]

LORETTA GAIL MARTIN
Plaintiff
v.
ROBERT LEE CLINE, JR.
Defendant

STIPULATION OF FACTS

COME NOW, the parties, by counsel, and file this Agreed Stipulation of Facts, and would show unto the Court as follows:

The pertinent facts relative to this case are as follows:

1. Loretta Gail Martin (formerly Loretta Cline) and Robert Lee Cline were married on September 7, 1999.
2. That Cicero Patsel Wheeler was the Aunt of Loretta Gail Martin.
3. That Cicero Patsel Wheeler appointed Gail Martin as her General Power of Attorney by written instrument dated February 27, 1998.

A copy of the Power of Attorney is attached hereto and labeled as "Exhibit A".

4. That in conjunction with her Power of Attorney and the Agreement of Cicero P. Wheeler and Gail Martin, Gail Martin borrowed \$34,000.00 from Cicero P. Wheeler on November 3, 1999.

A copy of the Note evidencing the loan and signed only by Gail H. Cline, is attached hereto and is labeled as "Exhibit B".

5. That Robert Lee Cline filed bankruptcy on January 17, 2002.

6. That Loretta Gail Martin (Cline) was aware that Robert Lee Cline filed bankruptcy.

7. That Robert Lee Cline did not list the Promissory Note, not any indebtedness to Cicero P. Wheeler in his bankruptcy as a debt.

8. That Robert Lee Cline was discharged at bankruptcy by order of the Court entered on April 23, 2002.

A copy of the Discharge Order is attached hereto and is labeled as "Exhibit C".

9. That Cicero P. Wheeler died on May 14, 2003.

A copy of the Death Certificate is attached hereto and is labeled as "Exhibit D".

10. That Gail Walker was appointed as Administrator of her Estate on June 24, 2003.

A copy of the appointment is attached hereto and labeled as "Exhibit E".

11. That on May 26, 2003, Robert L. Cline and Gail Cline executed a Promissory Note payable to the Estate of Cicero P. Wheeler.

A copy of the Note is attached hereto and is labeled as "Exhibit F".

12. That the Note has not been paid and is present the subject of a Circuit Court suit in Roanoke City Circuit Court.

A copy of the Motion for Judgment seeking judgment for \$15,090.40 is attached hereto and is labeled as "Exhibit G".

A copy of the Answer filed by the Defendant is attached hereto and is labeled as "Exhibit H".

Respectfully submitted,

/s/ Richard L. Greenberg
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